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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

Petition of)	
Lincoln County, Oregon, and the)	CCB # 97-241
Economic Development Alliance of)	
Lincoln County, a non-profit corporation,)	REPLY COMMENTS OF
for Declaratory Ruling and Preemption)	LINCOLN COUNTY
Pursuant to Section 253 of the)	AND THE ECONOMIC
Communications Act of 1934)	DEVELOPMENT
of Certain Provisions of the Oregon)	ALLIANCE
Telecommunications Utility Law)	

In addition to comments filed by the petitioners, the following entities have also filed Comments in this proceeding: (1) Oregon PUC; (2) GTE; (3) SBC Communications; and (4) UTC. The following is the petitioners' brief reply to those comments.

1. Oregon PUC

Much of the Oregon PUC comments explain how the Oregon PUC decision was a correct application of Oregon telecommunications law. The petitioners disagree with that interpretation, and have filed a separate state court appeal challenging that decision. However, whether or not the Oregon PUC interpretation of Oregon law was correct or incorrect is not subject to review by the Commission. The Communications Act does not empower the Commission to *overrule* a state PUC interpretation of state law (even if plainly wrong, as in this case), and the petitioners are not asking the Commission to do so. However, the Communications Act does empower the Commission to *preempt* state laws and regulations (as interpreted and applied by state PUC's) which are inconsistent with the Act.

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1 The Oregon PUC suggests that the Oregon PUC decision raises legal disputes which
2 are “unique to Oregon and are of no concern to the FCC.”¹ That comment totally misses the
3 mark. A state law or regulation which imposes an unnecessary and unjustified entry barrier
4 to the provision of telecommunications service is, as a matter of law, a concern to the FCC.

5 The Oregon PUC also suggests that the petitioners’ CoastNet proposal has been
6 “fluid and unclear in the details.”² That is simply not correct. The petitioners have clearly
7 and repeatedly expressed the essential details of the proposed CoastNet system. To the
8 extent that some of the details in the application became further refined through the Oregon
9 PUC process, those refinements were the direct result of meetings with Oregon PUC staff,
10 which resulted in futile attempts by the petitioners to structure their application in a manner
11 that would be acceptable to the Oregon PUC.

12 As in the original Oregon PUC decision, the Oregon PUC again relies upon Section
13 253(d) to save their decision.³ The Oregon PUC asserts that Oregon PUC licensing of the
14 CLPUD’s dark fiber would help “ensure that the public end-users receive quality service,
15 and that the providers, like CLPUD, are accountable for problems which may arise with
16 their network.”⁴ However, the Oregon PUC has yet again failed to explain how this is so.
17 The County and the Alliance assert that, under the Oregon telecommunications regulatory
18 scheme, this statement is incorrect. Oregon PUC licensing of the CLPUD’s dark fiber will
19 accomplish nothing, much less accomplish anything which can be saved by Section 253(d).

¹ Comments of Oregon PUC, at 2.

² Comments of Oregon PUC, at 2.

³ Comments of Oregon PUC, at 6-7.

⁴ Comments of Oregon PUC, at 6.

1 The petitioners do not oppose Oregon PUC licensing of their own CoastNet
2 activities, and would be accountable to consumers pursuant to Oregon PUC rules and
3 regulations (even when a problem arises from the CLPUD's dark fiber). This is true for any
4 telecommunications service provider that purchases or leases facilities (including fiber) from a
5 non-licensed third party. One analogy is switching software programs used by local exchange
6 carriers (LECs). Many of these programs are merely licensed to LECs, and the software
7 provider retains ownership. The Oregon PUC has never attempted to regulate these software
8 providers. If a problem with a customer's service occurs as a result of a flaw in the software,
9 the LEC is accountable to the customer under the Oregon PUC's service quality rules. The
10 Oregon PUC does not need to regulate or license the software vendor in order to protect the
11 end user. Another analogy is resellers of telecommunications services who have no control
12 over the underlying facilities, and who are routinely licensed by the Oregon PUC. If the
13 customer of a reseller complains, the Oregon PUC looks to the reseller for accountability, not
14 to the underlying provider. Under Oregon law, reseller applicants are not required to make
15 any affirmative showing regarding the regulatory status of the underlying facilities provider.

16 The Oregon PUC also fails to effectively respond to the Oregon PUC's
17 discrimination against the petitioners by having previously granted a license to another
18 provider who proposes to use the CLPUD's excess dark fiber optic capacity. The only
19 response of the Oregon PUC is that they may choose to look at that other license, and
20 possibly take some action.⁵

⁵ Comments of Oregon PUC, at 11. However, the Oregon PUC's own rules narrowly restrict the conditions under which the Oregon PUC may revoke a license. See Oregon Administrative Rule § 860-032-0015.

DATED this 21st day of January, 1998.

Mark Trinchero / KEB

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1 **CERTIFICATE OF MAILING AND SERVICE**

2 **CERTIFICATE OF MAILING**

3 I hereby certify that on January 21, 1998, I mailed the original and six copies of the
4 foregoing **REPLY COMMENTS OF LINCOLN COUNTY AND THE ECONOMIC**
5 **DEVELOPMENT ALLIANCE** to the Federal Communications Commission by placing that
6 original and those copies in a sealed envelope addressed as follows:

7 Secretary, FCC
8 1919 M Street, NW
9 Washington, DC 20554

10 **CERTIFICATE OF SERVICE**

11 I also certify that on January 21, 1998, I mailed a copy of the foregoing **REPLY**
12 **COMMENTS OF LINCOLN COUNTY AND THE ECONOMIC DEVELOPMENT**
13 **ALLIANCE** to:

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DATED and MAILED this 21st day of January, 1998.



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